

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of:	
PARENT ON BEHALF OF STUDENT,	OAH CASE NO. 2013050768
v.	
CUPERTINO UNION SCHOOL DISTRICT,	
CUPERTINO UNION SCHOOL DISTRICT,	OAH CASE NO. 2013050178
v.	
PARENT ON BEHALF OF STUDENT.	ORDER GRANTING MOTIONS TO CONSOLIDATE AND CONTINUE

On May 2, 2013, the Cupertino Union School District (District) filed a Request for Due Process Hearing (complaint) in Office of Administrative Hearings (OAH) case number 2013050178 (First Case), naming Student.

On May 17, 2013, Parents on behalf of Student filed a complaint in OAH case number 2013050768 (Second Case), naming the District. OAH set this matter for mediation on June 20, 2013, a prehearing conference on July 3, 2013, and a due process hearing to commence on July 11, 2013, and to proceed day-to-day.

On May 17, 2013, Student also filed a Motion to Consolidate the First Case with the Second Case. On May 21, 2013, the parties jointly filed a stipulation agreeing to consolidate the two cases and setting forth a requested time schedule for the consolidated matters that constitutes a request for continuance.

Consolidation

Although no statute or regulation specifically provides a standard to be applied in deciding a motion to consolidate special education cases, OAH will generally consolidate matters that involve: a common question of law and/or fact; the same parties; and when consolidation of the matters furthers the interests of judicial economy by saving time or preventing inconsistent rulings. (See Gov. Code, § 11507.3, subd. (a) [administrative proceedings may be consolidated if they involve a common question of law or fact]; Code of Civ. Proc., § 1048, subd. (a) [same applies to civil cases].)

Here, the First Case and Second Case involve a common question of law or fact, specifically, whether the District is entitled to exit Student from special education as proposed by the District at an individualized education program meeting of February 14 and March 15, 2013, or whether Student continues to be entitled to special education and related services, as contended by Parents. In addition, consolidation furthers the interests of judicial economy because it appears from the two complaints that the evidence and witnesses to be presented overlap substantially. Accordingly, consolidation is granted.

As ordered below, the Second Case shall be deemed the lead case in these consolidated matters. All time lines shall be determined based upon the filing of the Second Case.

Continuance

A due process hearing must be held, and a decision rendered, within 45 days of receipt of the complaint, unless a continuance is granted for good cause. (Ed. Code, §§ 56502, subd. (f) & 56505, subd. (f)(1)(C)(3).) The parties have jointly requested that the consolidated matters proceed with mediation on August 22, 2013, prehearing conference on August 28, 2013, and due process hearing on September 9 through 12, 2013. These dates fall beyond the currently set dates and are considered a request for continuance. There have been no prior request for continuances in these matters. The request to continue is granted.

ORDER

1. Student's Motion to Consolidate is granted.
2. All dates previously set in OAH Case Number 2013050178 (First Case) and OAH Case Number 2013050768 (Second Case) are vacated.
3. The parties' joint Motion to Continue is granted. The Mediation in the consolidated cases shall be held on August 22, 2013 at 9:30 a.m. The Prehearing Conference in the consolidated cases shall be held on August 28, 2013, at 1:30 p.m. The Due Process Hearing in the consolidated cases shall be held on September 9 through 12, 2013, and continuing from day to day thereafter as ordered by the Administrative Law Judge. The hearing shall begin at 1:30 p.m. on September 9, 2013, and at 9:30 a.m. on all other hearing days, unless otherwise ordered.
4. The 45-day timeline for issuance of the decision in the consolidated cases shall be based on the date of the filing of the complaint in OAH Case Number 2013050768 (Second Case), as modified by this Order.

Dated: May 22, 2013

/s/

CHARLES MARSON
Administrative Law Judge
Office of Administrative Hearings